

[Assembly Bill 1277](#) (Brough)

Date: 04/29/15

Program: All Tax and Fee Programs

Sponsor: Board of Equalization

See Code Sections below

Effective: January 1, 2016

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Summary: Increases from \$1,500 to \$2,300 the amount of levied funds the BOE's Taxpayers' Rights Advocate (TRA) is permitted to return to a taxpayer when the taxpayer can demonstrate that the levy threatens the health or welfare of the taxpayer or the taxpayer's family.¹ Also provides a mechanism for future inflation adjustments, extends this authorization irrespective of a jeopardy determination, and adds levy return authority to the remaining BOE-administered tax and fee programs that currently lack it.

Summary of Amendments: The amendments since the previous analysis clarify the terms for returns associated with jeopardy determinations.

Purpose: To adjust for inflation the dollar amount the TRA is authorized to return on a levy to prevent the levy from threatening the health and welfare of a taxpayer or the taxpayer's family.

Fiscal Impact Summary: Annual revenue loss of \$4,600.

Existing Law: Existing Revenue and Taxation Code (RTC)² authorizes the BOE's TRA to **release** a levy or notice to withhold, or order the **return** of up to \$1,500 to the taxpayer³ within 90 days of receiving levied funds, if the levy threatens the health or welfare of the taxpayer or the taxpayer's family.

Conversely, the Cigarette and Tobacco Products Tax Law (RTC Section 30459.2) and the Fee Collection Procedures Law (RTC Section 55333) require the BOE to release a levy upon the TRA's order but do not permit the return of levied funds, when the levy threatens the taxpayer's or the taxpayer's family's health or welfare. These provisions also require the BOE to release a levy when the expense of selling an asset exceeds the tax liability.

The TRA authority to release or return funds does not apply when a jeopardy determination has been issued. A jeopardy determination is issued when collection of the amount due is jeopardized by delay. These determinations are due and payable immediately and are subject to all collection actions as of the date they are served. Because a jeopardy determination is indicative of collection being in jeopardy if delayed, collection offices must give priority to these cases and take all appropriate collection actions, including the seizure of personal property.⁴ Internal Revenue Code provisions exempt certain property from levy, but allow the levy on principal residences and certain business assets in certain circumstances. If the Internal Revenue Service (IRS) Secretary finds that collection of the tax is in jeopardy, then the IRS may levy on certain business assets.⁵

¹ The reference to the taxpayer and family includes the taxpayer's spouse/partner and dependents.

² Sales and Use Tax Law (§ 7094), Use Fuel Tax Law (§ 9272), Alcoholic Beverage Tax Law (§ 32472), Energy Resources Surcharge Law (§ 40212), Emergency Telephone Users Surcharge Law (§ 41172), Hazardous Substances Tax Law (§ 43523), Integrated Waste Management Fee Law (§ 45868), Oil Spill Response, Prevention, and Administration Fees Law (§ 46623), Underground Storage Tank Maintenance Fee Law (§ 50156.12), and Diesel Fuel Tax Law (§ 60632).

³ The term "taxpayer" includes fee payers.

⁴ Jeopardy Determinations, Section 764.020, [Chapter 7 Collections](#), BOE Compliance Policy and Procedures Manual.

⁵ Section 6334 of Part II, of Subchapter D, of Chapter 64, of Subtitle F, of Title 26, of the United States Code.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.

The BOE must return a taxpayer's levied property or sale proceeds if: (1) the levy is not issued in accordance with law; (2) a taxpayer complies with an installment payment agreement; or (3) the property's return facilitates collection or is in the best interests of the state and the taxpayer. These provisions do not apply if the BOE finds tax collection is in jeopardy.

Proposed Law: This bill increases from \$1,500 to \$2,300 the amount of levied funds the TRA is permitted to return when the levy threatens the health or welfare of the taxpayer or the taxpayer's family, and allows the TRA to return levied funds associated with a jeopardy determination if the reason for the return if the ultimate collection of the amount due is no longer in jeopardy. Consistent with other tax and fee laws, this bill also provides the TRA the authority to return up to \$2,300 in levied funds under the Cigarette and Tobacco Products Tax Law and the Fee Collection Procedures Law, which governs the collection of the California Tire, Covered Electronic Waste Recycling, Fire Prevention, Marine Invasive Species, Water Rights Fees, and Lumber Products Assessment, as well as the Natural Gas Surcharge.

This bill is effective January 1, 2016.

Background: The Katz-Harris California Taxpayers' Bill of Rights⁶ provides certain guarantees under the California Sales and Use Tax Law to ensure that the rights, privacy, and property of California taxpayers are adequately protected during the tax assessment and collection process. The Taxpayers' Bill of Rights provides similar guarantees under the California Personal Income Tax Law and the Bank and Corporation Tax Law. In 1992, legislation⁷ extended the taxpayer rights provisions to most BOE-administered special tax and fee programs.

The Katz-Harris legislation added RTC Section 7094, which allowed the TRA to release a levy upon determination that the levy threatened the health or welfare of the taxpayer or the taxpayer's family. The language mirrored Franchise Tax Board (FTB) statutes and placed no time or dollar limitation on the request for release.

In 1995, Section 7094 was amended⁸ to read as it does today. Among other things, the Legislature granted the TRA additional authority to return (within 90 days from the levy) up to \$1,500, when the TRA determines the levy threatens the taxpayer's or the taxpayer's family's health or welfare.

RTC Section	Tax or Fee Program	Added	Amended	Bill No.	Amendment
7094	Sales & Use	1988	1995	SB 718	Return of Funds
9272	Use Fuel	1992	1995	SB 718	Return of Funds
30459.2	Cigarette & Tobacco	1992	N/A	SB 1661	Release of Levy
32472	Alcoholic Beverage	1992	1995	SB 718	Return of Funds
40212	Energy Resources	1992	1995	SB 718	Return of Funds
41172	Emergency Telephone	1992	1995	SB 718	Return of Funds
43523	Hazardous Substances	1992	1995	SB 718	Return of Funds
45868	Integrated Waste	1992	1995	SB 718	Return of Funds
46623	Oil Spill Response and Administration	1995	N/A	SB 722	Release of Levy & Return of Funds
50156.12	Underground Storage Tank	1992	1995	SB 718	Return of Funds
55333	Fee Collection Procedures	1992	N/A	SB 1920	Release of Levy
60632	Diesel Fuel	1994	1996	SB 1827	Release of Levy & Return of Funds

⁶ Assembly Bill 2833, Ch. 1574, Stats. 1988; effective January 1, 1989.

⁷ Senate Bill 1661, Ch. 438, Stats. 1992; effective January 1, 1993.

⁸ Senate Bill 718, Ch. 555, Stats. 1995; effective January 1, 1996.

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In General: Both the IRS and the FTB are authorized by statute to provide for the release of a levy if the levy creates an economic hardship or otherwise threatens the health and welfare of the taxpayer, his or her spouse and dependents or family.

With respect to the FTB, a levy may be released in the event of any circumstances deemed appropriate by the FTB, including, but not limited to the following:

- Expense to the state related to the sales process exceeds the liability.
- TRA orders the release upon a finding that the levy threatens the health or welfare.
- Proceeds from the sale would not result in a reasonable reduction of the debt.
- Administrative procedures were not followed when the levy was issued.
- Installment payment agreement was entered into to pay the tax liability for which the levy was issued, unless the agreement allows for a levy.
- Release of the levy will facilitate collection of the tax liability or will be in the best interest of the taxpayer and state.

In general, the IRS is also authorized to release a levy under similar conditions as the FTB. These include the following:

- Release of the levy will facilitate collection of the liability.
- Installment payment agreement has been entered into, unless the agreement allows for a levy.
- Secretary determines that the levy creates a financial hardship.
- Liability is satisfied or becomes unenforceable due to lapse of time.
- Fair market value exceeds the liability and release will not hinder collection.

The IRS is specifically authorized to return property that has been wrongfully levied upon. The amount and time are both specified and exceed the time limit and amount that the BOE is authorized to return. The IRS may return property at any time. An amount equal to the amount of on the levy may be returned prior to nine (9) months from the date of levy.

Legislative History. Similar changes have been attempted in the prior two years. BOE-sponsored [Assembly Bill 1222](#) (Bloom, 2013) was amended into a different measure when the author did not accept Senate Governance and Finance Committee suggested amendments limiting the bill to provide an out-year inflation adjustment of the return amount. Last year's [Assembly Bill 2249](#) (Bloom) was not heard in a committee.

Commentary:

- 1. Effect of the bill.** This bill adjusts for inflation the amount of temporary assistance taxpayers may receive when a levy threatens their or their family's health or welfare. In addition, the bill provides the TRA consistent levy return authority for all BOE administered tax and fee programs.
- 2. The April 29, 2015 amendments** substitute the term "determination" for "assessment" in regards to jeopardy cases, and clarify that the TRA may return funds on jeopardy determinations if collection of the amount due is no longer in jeopardy.
- 3. The return of levied funds does not reduce the tax liability.** The BOE is authorized to levy bank accounts to collect delinquent amounts. Occasionally a taxpayer is unable to contact the TRA to stop the funds from being levied until after the BOE has seized the funds. In these rare cases, levied funds are needed to cover the taxpayer's basic living expenses. Only the TRA, and not the Board, is allowed to order funds returned when the levy threatens the health or welfare of the taxpayer or the taxpayer's family.

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The BOE's TRA bases the decision to return levied funds upon a taxpayer's reasonable documentation and financial condition disclosure. Typically the taxpayer completes a BOE financial statement with accompanying documents to substantiate income and expenses. Since California is a community property state, the BOE requests information about total household income and expenses.

4. **Basis for the suggested increase.** The increase from \$1,500 to \$2,300 is based on the accumulated California inflation factor from the date Section 7094 was first effective, on January 1, 1996, to the present. This measure also provides a mechanism for future inflation adjustments.

The amount returned may not cover a taxpayer's monthly living expenses, but a reasonable increase in the funds returned will help a taxpayer provide for his or her family when the need arises. The incremental inflationary adjustment ensures that the amount returned will keep pace with the cost of living.

Administrative Costs: This measure does not affect the BOE's administrative costs.

Revenue Impact: The annual revenue loss is expected to be approximately \$4,600. This estimate is based on the TRA's historical experience and discussion with BOE's collection staff. BOE staff assumes the TRA will average a return of funds about twice per year. The return of funds is used infrequently because, in most cases where the taxpayer claims hardship due to a levy, the collection staff and the TRA have been able to reach an equitable outcome with the taxpayer.